

Memorandum

To: CHAIR AND COMMISSIONERS

CTC Meeting: February 1-2, 2006

Reference No.: 2.4a.(4)
Action Item

From: CINDY McKIM
Chief Financial Officer

Prepared by: Bimla G. Rhinehart
Division Chief
Right of Way and Land
Surveys

Ref: APPEARANCE

RECOMMENDATION:

The Department of Transportation (Department) recommends the California Transportation Commission (Commission) adopt Resolution of Necessity C-19236, which is the subject of this Appearance. The summary below identifies the location of and designates the nature of the property rights covered by the Resolution of Necessity. In accordance with statutory requirements, the owners have been advised that the Department is requesting a resolution at this time. Adoption of Resolution of Necessity C-19236 will assist the Department in the continuation of the orderly sequence of events required to meet construction schedules.

C-19236 – Jefferson M. Hunt, et ux.

11-SD-125-PM 9.3 - Parcel 32138-1, 2, 3, 4 - EA 003009 - Certification Date: 01/27/05. Freeway - construct six lane freeway. Authorizes condemnation of land in fee for a State highway, extinguishment of abutter's rights of access, temporary easements for highway construction, and underlying fee. Located in the unincorporated area of San Diego County at the northwest corner of San Miguel Road and A Street. APN 585-120-14.

Attachments

SUMMARY OF ISSUES

Jefferson M. Hunt and Linda P. Hunt are the owners of Parcel 32138, located at the northwest corner of San Miguel Road and A Street in the unincorporated area of San Diego County. Mr. Robert C. Hawkins is legal counsel for the Hunts. The parcel is 4.61 acres and is improved with a garage, horse barn, riding arena, wood and metal pipe fencing, and is used to board horses. The improvements impacted by the project consist of fencing.

The following is a description of the concerns expressed by Mr. Robert Hawkins, legal counsel for the Hunts, followed by the Department's response.

Owner:

Mr. Hawkins stated that the configuration of the roadway alignment will cut off access for the Hunts to the trail network, and the design of a equestrian/pedestrian trail over-crossing at San Miguel bridge would still not allow his client to use the trails on the west side of the road alignment. He stated that horses would not use the bridge and that a horse tunnel under the alignment would be a preferred solution.

Department Response:

The State Route (SR) 125 Team advised that the design of the trails does not sever any trails access for the Hunts. The project, in accordance with the Final Environmental Impact Report (EIR) / Environmental Impact Statement (EIS), is required to re-connect severed trails as a result of the new road and the current design reconnects the trails adjacent to the Hunt property. The Team stated that equestrian bridges are successfully utilized in other areas within the State and meet the County standards for trails, and have been approved by the Division of the State Architect in terms of Americans with Disabilities Act (ADA) compliance.

The SR125 Team stated that a tunnel under the freeway was not the preferred solution at this location. The trails on the project are both for equestrian and pedestrian use. Due to the topography of the area and the grade of the new roadway, any tunnel would be 400-500 meters in length in order to still meet ADA guidelines. This would create serious safety and ventilation concerns. The related and extensive earth scarring would create significant new aesthetic, biological, and socio-economic impacts that would result in an overall larger total impact to this community.

The SR125 Team explained that the proposed design has been in existence since the mid-90's. The current design has been developed through coordination with local government and the equestrian community. The current design was also included in the EIR/EIS public review.

In the past, equestrians have argued many differing preferences for horse behavior related to structures. The only apparent agreement by equestrians is that horses need to be trained to manage new situations, whether the new situation is a bridge, a tunnel, or a simple road.

Owner:

Mr. Hawkins expressed concern that given the configuration of the trails it would encourage people to park their vehicles and unload their horses on the road leading to the Hunts property.

Department Response:

The SR125 Team stated that it would be more likely that equestrians would utilize the parking facilities at the Summit Meadows Park where there is ample room to maneuver and park trailers, but a “no parking” sign and striping could be placed on the road to the Hunt property to discourage people from parking and unloading. Mr. Hawkins did state this is an existing problem that he had hoped would be alleviated by the proposed project.

Owner:

Mr. Hawkins expressed that the alignment of the SR125 South creates a significant unmitigated noise impact to the Hunts.

Department Response:

The SR125 Team advised that the Noise study for the project had been approved by the Department and was developed in accordance with the Federal Guidelines. Under these guidelines a sound barrier needs to provide 5dB noise reduction in order to be deemed “feasible” and then must go through a cost analysis to determine if the barrier is “reasonable”. The SR125 South approved noise study evaluated two 16 foot noise walls adjacent to the Hunt property but these were found not to provide a 5dB noise reduction, and thus in accordance with the federal guidelines are “unfeasible.” As a result, the walls would not be constructed.

The SR125 Team advised that the overall alignment and geometry of the Gap, Connector and Toll Road had been designed to optimize the amount of the road that was in-cut and below grade and meets the Department’s requirements of the Highways Design Manual.

Owner:

The Mr. Hawkins expressed that the alignment of the SR125 South creates a significant unmitigated aesthetic impact to the Hunts, and that the landscape plan should be presented to the Community to allow the residents to give input into the plan and the plant palette.

Department Response:

The SR125 Team advised that the landscape concept plan had been presented to the community through the Community Advisory Committee (CAC) meetings and that the final design would also be presented to the CAC for input in early 2006. The landscape design is to comply with the standards outlined in Chapter 900 of the Highway Design Manual as well as other commitments listed in the EIS.

Owner:

Mr. Hawkins expressed that the Hunts were concerned about the possible effects of water passing under the San Miguel Creek Bridge on the owner's property.

Department Response:

The owner misunderstood the nature of the improvements as they related to the flow of San Miguel Creek. The creek will not be channelized in box culverts. The structure will cross the creek but will not affect the flow of the creek.

Owner:

Mr. Hawkins advised that the alignment of the new access roads for San Diego Gas and Electric (SDG&E), which were part of the Hunt property appraisal, impacted the owner's ability to access their oversized three-car garage and created significant internal circulation impacts for the Hunts.

Department Response:

The SR125 Team requested further clarification to the location of the access to the existing garage. The Team confirmed that the proposed design and grading in this area does not preclude Mr. Hunt from utilizing the existing access to the garage.

Owner:

Mr. Hawkins asserted that the offer was not made in accordance with Government Code Section 7267.2 because he does not agree with the appraiser's definition of the larger parcel in the appraisal.

Department Response:

The Department is in full compliance with Government Code 7267.2, and a written offer for the full amount of the current appraisal has been made. Mr. Hunt has an issue with the amount of compensation being offered. Mr. Hunt has been notified that issues related to compensation are outside the purview of the Commission and will not be heard or considered by the Commission, and are instead an issue of differing appraisal opinions.

Owner:

At the Second Level Review (Condemnation Panel Review), Mr. Hawkins suggested that the bridge over San Miguel Creek be raised in order to allow the trail to go under the freeway rather than over the bridge that crosses San Miguel Road, so that the horses would not need to go over the bridge.

Department Response:

The SR-125 Team advised that raising the bridge would change the profile of the freeway resulting in increased visual and noise impacts and require additional right of way. This change would require an Environmental Reevaluation that would delay the project. The time necessary

to obtain environmental approval and additional right of way would be approximately two years. This project is in construction and the delay costs are estimated at \$100,000 per day, resulting in costs in excess of \$70 million to make this change to the bridge. The change would also affect other design elements including San Miguel Road and the access road to the SDG & E Substation. It would be unlikely that County Road Standards and access requirements could be met with these changes to the local roads if the profile of the freeway were raised. All of these issues were identified in the Project Report and the EIR/EIS, and the alignment chosen minimizes visual, noise, and right of way impacts in the area near the Hunt parcel.

Owner:

Mr. Hawkins indicates in his letter to Mr. John Barna, Executive Director of the Commission, dated December 27, 2005, that the Department's second Notice of Intent to Condemn dated September 16, 2005, was a duplicate notice that is premature and undercuts the rationale for the administrative review procedure established in the manuals for the First Level Review (District Condemnation Evaluation) and the Condemnation Panel Review.

Department Response:

In two respects, the property owner's letter of December 27, 2005, misconstrues the fundamental nature of the District Condemnation Evaluation and the Condemnation Panel Review. As noted in the Project Development Procedures Manual (PDPM), Chapter 28, Article 3-Policy, the purpose of the two reviews is to ascertain whether there is sufficient support for the three elements required in the Resolution of Necessity. The project reviews are conducted to determine if there are "opportunities for resolution." When distilled down to the most fundamental essence, the two meetings are informal dispute resolution opportunities. They are not administrative hearings like those held before Administrative Law Judges.

Owner:

Mr. Hawkins objected to the Condemnation Panel Review conducting a site visit prior to the December 7, 2005 hearing, without notice to the Hunt Family and without giving the Hunt Family an opportunity to appear and present evidence at the site visit.

Department Response:

The purpose of the on-site visit is to familiarize the panel members, who are not already familiar with the project, with the terrain and the project itself so they can more effectively understand the issues that may be presented to them at the Condemnation Panel Review. The PDPM's Procedures section relating to the Condemnation Panel Review expressly indicates the field review is to be conducted by the Panel members prior to the meeting with the owner.

The on-site visit is not meant to be another forum for the property owner to present evidence of issues that are not germane to the Resolution of Necessity - public interest and necessity, planned with the greatest public good and least private harm, necessity for the project, and whether the offer of just compensation was made per Government Code section 7267.2.

Owner:

Mr. Hawkins objected to the Department's legal counsel, Mr. Glenn Mueller, appearing as a Condemnation Panel Review Member for the Condemnation Panel Review since he appeared at the District Condemnation Evaluation and represented the District in opposition to the Hunt Family's Objections.

Department Response:

As to the property owners' contention that the presence of the same Department counsel at the District Condemnation Evaluation and the Condemnation Panel Review, the property owners confuse the purpose of the role of the Department's Legal Division on the two panels.

The Legal Division is present to provide legal counsel to the other panel members. It is not an adjudicative role. Unlike the technical or engineering issues commonly associated with project design or right of way limits, there should often be a single answer to a specific legal question the panel members may have. The two-step dispute resolution process does not include "shopping" for differing legal opinions.

Attachments

Resolution of Necessity Appearance Fact Sheet

<u>PROJECT DATA:</u>	11-SD-125-KP 16.7 / 17.9
<u>Location:</u>	State Route (SR)-125 in the county of San Diego
<u>Limits:</u>	In San Diego County on SR-125 from San Miguel Road to SR-54.
<u>Cost:</u>	Current construction cost estimate \$82,676,000 Current right of way cost estimate \$30,834,000
<u>Funding Source:</u>	TransNet/SANDAG/Federal Subvention
<u>Number of Lanes:</u>	Existing: N/A Proposed: four lanes
<u>Proposed Major Features</u>	Interchange at SR-54/SR-125; retaining walls; bridge at Sweetwater Regional Park; bridge over San Miguel Road; multi-use trails and local street improvements.
<u>Traffic:</u>	Existing: N/A Proposed (year 2030): 162,000
<u>PARCEL DATA:</u>	
<u>Property Owner:</u>	Jefferson M. Hunt and Linda P. Hunt
<u>Parcel Location:</u>	Assessor's Parcel Number (APN) 585-120-14. Located at the Northeast corner of San Miguel Road and A Street, Bonita.
<u>Present Use:</u>	Horse corrals, riding arena, and garage
<u>Zoning:</u>	Rural Residential 2 (RR2)
<u>Area of Property:</u>	4.61 acres
<u>Area Required:</u>	Parcel 32138-1 = 1,743 square feet (SF) in underlying fee Parcel 32138-2 = 4,245 SF in fee 5,780 SF underlying fee Parcel 32138-3 = 1,981 SF temporary construction easement (TCE) 355 SF TCE in the underlying fee area Parcel 32138-4 = 7,550 SF TCE in fee Total = 21, 654 SF (0.497 acres)

RESOLUTION OF NECESSITY REVIEW PANEL REPORT

The Resolution of Necessity Review Panel (Panel) met December 7, 2005, in San Diego. The Panel members consisted of Donald Grebe, Department of Transportation (Department) Headquarters (HQ's) Right of Way; Glenn Mueller, Department San Diego Legal Division; Linda Fong, Department HQ's Division of Design; and Deborah Gebers, Department HQ's Right of Way, was Secretary to the Panel. Mr. Jefferson M. Hunt, the property owner, and his legal counsel, Robert C. Hawkins were present at the meeting.

This report summarizes the findings of the Panel with regard to the four criteria required for a Resolution of Necessity and makes a recommendation to the Chief Engineer.

NEED FOR THE PROJECT

Benefits to the regional highway facilities include a reduction in traffic congestion on Interstate (I) - 805 and I-5 through State Route (SR)-125 South providing an alternative means to SR-905 and the South Bay region. The route will also serve to provide a connection to the Otay Mesa Point of Entry via SR-905. The addition of access points from the local road system to the regional system will serve to reduce traffic congestion on the existing local road systems within the city of Chula Vista, as well as the surrounding communities of Bonita/Sunnyside and Spring Valley. The elimination of the signalized intersection on SR-54 at Sweetwater Road/Worthington Street and the upgrade to a six-lane facility on SR-54 will also improve traffic operations. It is anticipated that these local streets will experience a reduction in traffic upon completion of construction due to the severed access with SR-54.

PROJECT PLANNING AND LOCATION

Planned since 1959, this segment of SR-125 is a component of the San Diego Regional Outer Loop consisting of SR-905, SR-125, and SR-56. The SR-125 South project will connect SR-125 to SR-905 with an ultimate eight-lane facility, with a High Occupancy Vehicle (HOV) lane in each direction.

Benefits to the regional highway facilities include a reduction in traffic congestion on Interstates (I) 805 and I-5 through SR-125 South, providing an alternative means to SR-905 and the South Bay region. The route will also serve to provide a connection to the Otay Mesa Point of Entry via SR-905.

The project is phased into three components. The "Gap" will consist of improvements on SR-54 and Sweetwater Road as part of the SR-125/SR-54 interchange design. The interchange will consist of direct connectors and SR-54 main lane improvements aligned above a new realigned Sweetwater Road/Worthington Street. The "Connector" includes the direct connectors of this interchange and a portion of the SR-125 mainline alignment from the SR-125/SR-54 interchange to the San Miguel Road Overcrossing, multi-use trails, and local streets and improvements.

The “Toll Road” will include all other improvements proposed for the SR-125 corridor from San Miguel Road to SR-905.

NEED FOR SUBJECT PROPERTY

This parcel is needed in order to build an access road to the San Miguel Substation, a facility owned by San Diego Gas and Electric (SDG & E) that delivers electricity to a large portion of San Diego County. This road will also provide access to a number of local residents whose access has been severed by the project. Due to the topography at this location, it would not be possible to avoid this parcel without additional impacts to other properties that would be much more extensive than the impacts to the Hunt property. Additionally, changing the design would result in a delay of at least two years to complete an Environmental Reevaluation and acquire necessary property rights. This project is in construction, with an anticipated completion date of late Fall 2006. Any delay in opening this project would result in a day for day delay in opening the Toll Road. San Diego Expressway LP (SDELP), our private partner in the Toll Road, estimates the delay costs to be approximately \$100,000 per day if the Toll Road does not open on time. Based on SDELP's estimate, the cost of such a delay would be in the range of \$70,000,000.

The following is a description of the concerns, which the property owner has expressed and the Department's response.

Owner:

Mr. Hawkins stated that the configuration of the roadway alignment will cut off access for the Hunts to the trail network, and the design of an equestrian/pedestrian trail over-crossing at San Miguel bridge would still not allow his client to use the trails on the west side of the road alignment. He stated that horses would not use the bridge and that a horse tunnel under the alignment would be a preferred solution.

Department Response:

The SR125 Project Team advised that the design of the trails does not sever any trails access for the Hunts. The project, in accordance with the Final Environmental Report (EIR) / Impact Environmental Impact Statement (EIS), is required to re-connect any severed trails as a result of the new road and the current design reconnects the trails adjacent to the Hunt property. The Team stated that equestrian bridges are successfully utilized in other areas within the State and meet the County standards for trails, and have been approved by the Division of the State Architect in terms of Americans with Disabilities Act (ADA) compliance.

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Department Response:

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Department Response:

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Owner:

Mr. Hawkins objected to the Department's legal counsel, Mr. Glenn Mueller, appearing as a Condemnation Panel Review Member for the Condemnation Panel Review since he appeared at the District Condemnation Evaluation and represented the District in opposition to the Hunt Family's Objections.

Department Response:

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The Legal Division is present to provide legal counsel to the other panel members. It is not an adjudicative role. Unlike the technical or engineering issues commonly associated with project design or right of way limits, there should often be a single answer to a specific legal question the panel members may have. The two-step dispute resolution process does not include "shopping" for differing legal opinions.

PARCEL DESCRIPTION

The larger parcel is identified as Assessor's Parcel Number (APN) 585-120-14 and is located on the northeast corner of San Miguel Road and A Street in the city of Bonita in San Diego County. The total property area is 4.61 acres. The property is rectangular in shape and zoned Rural Residential – one family dwelling unit per lot, lot size one acre, minimum. The larger parcel is improved with a garage, horse barn, riding arena, wood and metal pipe fencing, and is used to board horses. All utilities are available. There is an easement for ingress and egress across the northern property line and an unpaved road extending easterly to northerly from the southwest corner, which provides access to the eastern portion of the property. Neighbors also use it to access their properties. The property was appraised as vacant because the improvements do not contribute to the value of the property. The Highest and Best Use of the property is development with four single-family homes on individual lots.

The rights being acquired from the property owner for the proposed project totals 11,768 square feet (0.270 acres) in fee, and 9,886 square feet (0.227 acres) in temporary construction easements. Fencing is the only improvement located within the proposed acquisition area. The subject parcels, Parcel Numbers 32138-1, 2, 3, 4, are located on the southwesterly portion of APN 585-120-14.

STATUTORY OFFER TO PURCHASE

The Department has appraised the subject property and offered the full amount of the appraisal to the owners of record as required by Government Code Section 7267.2.

PANEL RECOMMENDATION

The Panel concludes that the Department's design complies with Section 1245.230 of the Code of Civil Procedure in that:

- The public interest and necessity require the proposed project.
- The proposed project is planned or located in the manner that will be most compatible with the greatest public good and least private injury.
- The property to be condemned is necessary for the proposed project.
- An offer to purchase in compliance with Government Code Section 7267.2 has been made to the owners of record.

The Panel recommends submitting a Resolution of Necessity to the California Transportation Commission.

DONALD E GREBE, Chief
Office of Project Delivery
Division of Right of Way and Land Surveys
Panel Chair

I concur with the Panel's recommendation:

RICHARD D. LAND
Chief Engineer

**PERSONS ATTENDING SECOND LEVEL REVIEW PANEL
HEARING ON DECEMBER 7, 2005**

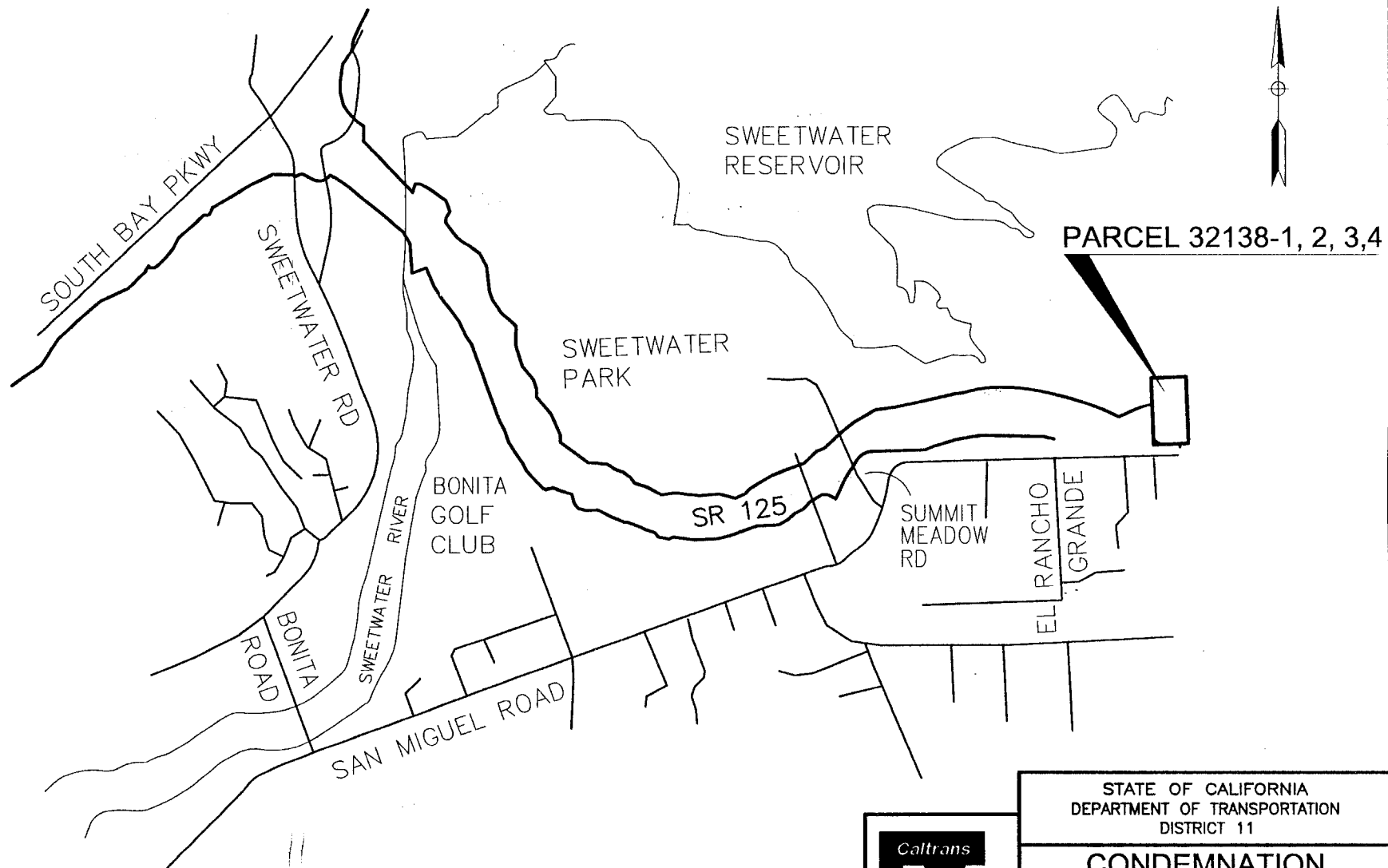
Donald Grebe, Headquarters Right of Way, Panel Chair
Glenn Mueller, San Diego Legal Office Attorney, Panel Member
Linda Fong, Headquarters Design, Panel Member
Deborah Gebers, Headquarters Right of Way, Panel Secretary

Robert C. Hawkins, Legal Counsel for Jeff Hunt
Jeff Hunt, Property Owner

Pedro Orso-Delgado, District 11, District Director
Anne Marc-Aurelle, District 11, Division Chief Right of Way
Jason A. Reynolds, District 11, Environmental Analysis
Ramon Martinez, District 11, Transportation Engineer
Cheryl Revell, District 11, Senior Right of Way Agent
Paul Solosky, District 11, Right of Way Agent
Laurie Berman, District 11, Project Manager
Tony Evans, California Transportation Ventures
Angus Murray, Otay River Constructors

COUNTY OF SAN DIEGO

SUIT # 1242



STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
DISTRICT 11

CONDEMNATION

RIGHT OF WAY
MAP NO.

KEY MAP

COUNTY	ROUTE	KP/PM
SD	125	15.0/9.3

SCALE
NO SCALE

EXHIBIT "A"

E.A. 003002

SHEET 1 OF 3

COUNTY OF SAN DIEGO

SUIT # 1242

T. 17 S., R. 1 W. S.B.M.

SEC. 21

NW 1/4

MAP 335
ROS 13208

ROS 3446

SEC. 21

NE 1/4

ROS 9579

MAP 586
LOT 8

PM 9058
PARCEL 2

PM 4633
PARCEL 2

SAN MIGUEL ROAD

1/16 SEC. LINE

200.795 m
1/4 SEC. LINE
N00°08'10"E

'A' STREET

200.753 m
N00°09'03"E

N89°49'28"W 106.450 m

TEMP. CONST. EASE.

(32138-3)

TEMP. CONST. EASE.

(32138-4)

N89°50'50"W 106.399 m

(32138-1)

KP 15.0
PM 9.3

167

169

"A" LINE

10

"SM" LINE

11

168

9



STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
DISTRICT 11

CONDEMNATION MAP

RIGHT OF WAY
MAP NO.

POR. CLO 52039m

COUNTY ROUTE
SD 125

KP/PM
15.0/9.3

SCALE
NO SCALE

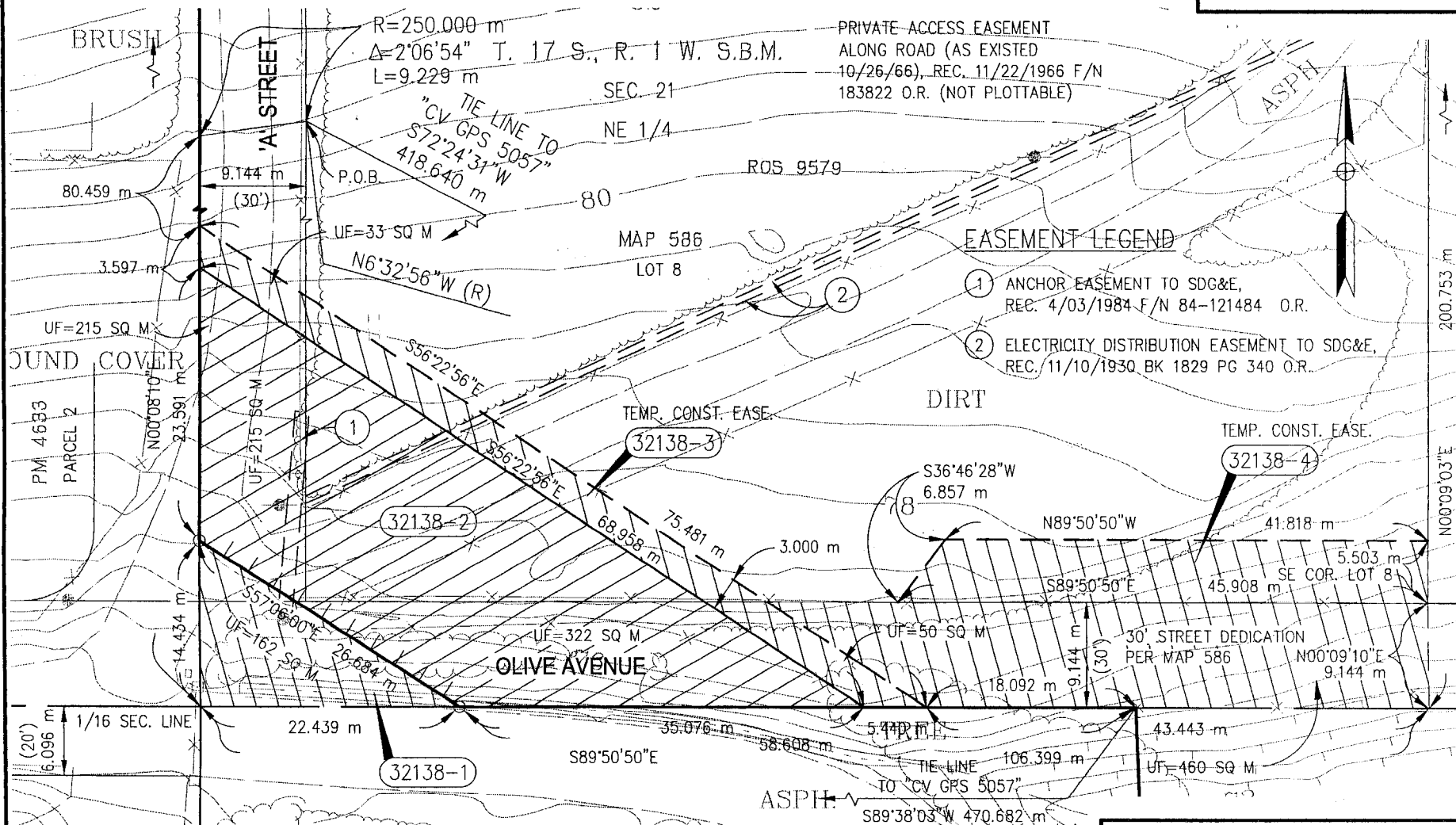
EXHIBIT "B"

E.A. 003002

SHEET 2 OF 3

COUNTY OF SAN DIEGO

SUIT # 1242



PARCEL NUMBER	VESTEE	① AREAS (SQ. M. OR NOTED)			① AREAS (SQ. FT. OR NOTED)			ACQUIS. CODE ③
		R/W	EXC. ②	REM. ②	R/W	EXC. ②	REM. ②	
32138-1	HUNT, JEFFERSON & LINDA	0		18,247	0		196,414	F
32138-2	HUNT, JEFFERSON & LINDA	394			4,245			F
32138-3	HUNT, JEFFERSON & LINDA	134			1,443			E
32138-4	HUNT, JEFFERSON & LINDA	241			2,598			E



STATE OF CALIFORNIA
DEPARTMENT OF TRANSPORTATION
DISTRICT 11

CONDEMNATION MAP

RIGHT OF WAY MAP NO.		POR. CLO 52039m	
COUNTY	ROUTE	KP/PM	SCALE
SD	125	15.0/9.3	1:500
			SHEET 3 OF 3

EXHIBIT "C" E.A. 003002